



# **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)**

## **FEDERAL INSURANCE MITIGATION ADMINISTRATION (FIMA)**

### **APPEAL DECISION**

*FEMA Flood Insurance Appeal Decision #B17*

## **OVERVIEW**

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The policyholders filed an appeal in June 2020, alleging their flood insurance carrier (hereinafter “insurer”) improperly denied part of their claim under the Standard Flood Insurance Policy (SFIP)<sup>1</sup> for damages to covered property arising from a flood event in March 2019.<sup>2</sup>

In its review, FEMA found the following facts relevant:

- At the time of loss, the policyholders had \$53,000 of building coverage and \$23,400 of personal property coverage.
- The policyholders notified the insurer of the loss and the insurer assigned an adjuster to inspect the damage.
- The adjuster inspected the property in March 2019, and recorded a 55-inch watermark to the exterior of the building and 50 inches of flood water inundating the interior of the building.
- The adjuster prepared an estimate of damages for the insurer’s review.
- The policyholders began demolition of the insured building in April 2019.
- In May 2019, the insurer issued the policyholders payment totaling \$53,000, policy limits, for covered building property and \$19,995 for covered personal property.
- In June 2019, the policyholders filed a request for benefits under Coverage D, Increased Cost of Compliance. In support of their request, the policyholders submitted a letter dated April 2019, from the local community official confirming the building sustained damages and the policyholders would remove the building from the lot.
- The insurer advised the policyholders they needed to submit a substantial damage letter from the local community official specifying the compliance standards, along with an elevation certificate in order for the insurer to determine whether the dwelling was out of compliance at the time of loss.
- The policyholders submitted a substantial damage letter dated September 5, 2019 from the local community official to the insurer.
- In a letter dated May 2020, the insurer denied the policyholders’ request for Increased Cost of Compliance benefits because the policyholders began demolition before the local community official issued the substantial damage determination letter.

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<sup>1</sup> See 44 C.F.R. § 61.13 (2018); Dwelling Form available at 44 C.F.R. pt. 61 App. A(1) [hereinafter “SFIP”].

<sup>2</sup> The policyholders file this appeal under 44 C.F.R. § 62.20. The appeals process is available after the insurer issues a written denial, in whole or in part, of the policyholders’ claim. The policyholders’ appeal and related documents concerning the appeal, claim, or policy are on file with FEMA, Federal Insurance and Mitigation Administration, Federal Insurance Directorate, Policyholder Services Division, Appeals Branch [hereinafter “Appeal File”].

- The policyholders appeal the denial of the request for Increased Cost of Compliance benefits, stating the April 2019 letter from the local community official is evidence of substantial damage.
- Because this information does not respond to the insurer's reason for denial, FEMA's decision is based on the documentation in the claim file.

## **RULES**

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The SFIP states Coverage D - Increased Cost of Compliance will pay up to \$30,000 to comply with State or local floodplain management law or ordinance affecting the repair or reconstruction of a structure suffering flood damage. Compliance activities include elevation, floodproofing, relocation, or demolition.<sup>3</sup>

## **ANALYSIS**

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The policyholders appeal the denial of Increased Cost of Compliance benefits.

Increased Cost of Compliance benefits will pay up to \$30,000 to comply with State or local floodplain management law or ordinance affecting the repair or reconstruction of a structure suffering flood damage. Compliance activities include elevation, floodproofing, relocation, or demolition. The policyholders need a substantial damage letter from the local community official stating the insured building must comply with its local floodplain management ordinance. The substantial damage letter must be dated before the property owner initiates flood mitigation activities.<sup>4</sup> Once the substantial damage letter satisfies SFIP eligibility for Coverage D – Increased Cost of Compliance, other processing requirements are necessary before the insurer can issue payment.

Here, the policyholders submitted a letter dated April 9, 2019, from their local community official, verifying the insured building would be removed due to flood damage. The policyholders demolished the building on April 15, 2019. The local community office did not issue the substantial damage letter until September 5, 2019. Increased Cost of Compliance eligibility requires the local community official issue the substantial damage determination letter requiring the policyholders' compliance with their floodplain management ordinance before the initiation of mitigation activities. Because policyholders demolished the insured building prior to issuance of the substantial damage determination letter, the policyholders were already in compliance at the time the local community official issued the substantial damage letter.

Because the policyholders were already in compliance with the floodplain management ordinance at the time the local community official issued the substantial damage letter, the insurer correctly denied the policyholders' request for benefits under the SFIP Coverage D – Increased Cost of Compliance coverage.

## **CONCLUSION**

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Based on the facts and analysis above, FEMA concurs with the insurer's decision to deny the policyholders' request for benefits under the SFIP's Coverage D - Increased Cost of Compliance coverage.

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<sup>3</sup> See SFIP (III)(D).

<sup>4</sup> See National Flood Insurance Program Claims Manual, Appendix K – Increased Cost of Compliance Checklist (Jun. 1, 2019).

If the policyholders request Increased Cost of Compliance benefits, they should contact their local community official and obtain the documentation that shows the local community official inspected the insured building prior to its demolition, and determined from that inspection the building was substantially damaged, or suffered “major damage” marking for compliance requirements. Once this information is obtained, the policyholders should submit it directly to the insurer for consideration.